

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NOS.0131016010,  
0131016026, 0131016112, and 0131016113:

DOLORES MCCARTHY AND	)	Case Nos. 390-2014, 391-2014,
LOUISE KOMAROSKI,	)	392-2014 and 393-2014
	)	
Charging Parties,	)	
	)	
vs.	)	HEARING OFFICER DECISION
	)	AND NOTICE OF ISSUANCE OF
ANDERSON SALES, INC., AND	)	ADMINISTRATIVE DECISION
FRANK DELAWARE, D/B/A	)	
SIDE TECH AND RAIN MASTER,	)	
	)	
Respondents.	)	

\* \* \* \* \*

## I. Procedure and Preliminary Matters

Dolores McCarthy and Louise Komaroski filed complaints with the Department of Labor and Industry on February 28, 2013. Their complaints alleged that the Respondents, Anderson Sales, Inc., and Frank Delaware, d/b/a Side Tech and Rain Master, discriminated against each of them in their employment on the basis of sex by subjecting each of them to a hostile working environment, retaliated against each of them by taking adverse action against each of them for engaging in protected activity, and (in McCarthy's case only) failed to accommodate her disability in employment, all in violation of the Montana Human Rights Act, Title 49, Chapter 2, Mont. Code Ann.

On September 4, 2013, the Department of Labor and Industry gave notice that the charges would proceed to a contested case hearing and appointed Gregory L. Hanchett as the Hearing Officer. On October 31, 2013, by Notice of Substitution of Hearing Officer, Terry Spear was appointed as the Hearing Officer.

The contested case proceeded on April 29, 2014, in Billings, Montana. McCarthy and Komaroski attended, represented by their counsel, Patricia D. Peterman and John M. Vannatta, of Patten, Peterman, Bekkedahl & Green, PLLC. Anderson Sales, Inc., attended through its designated representative, Darrell Anderson, represented by its counsel, T. Thomas Singer, Axilon Law Group, PLLC. Frank Delaware attended and participated on his own behalf, without counsel.

Dolores McCarthy, Louise Komaroski and Darrell Anderson testified under oath at hearing.

## II. Issues

The issues here are whether Anderson Sales and Delaware discriminated or retaliated against McCarthy and Komaroski as alleged, and if so, what harm, if any, they sustained as a result, what reasonable measures should the department order to rectify such harm, and what should the department require to correct and prevent similar discriminatory or retaliatory practices? A full statement of the issues appears in the final prehearing order.

## III. Findings of Fact

1. Respondent Anderson Sales, Inc. ("the company"), employed Charging Party Louise Komaroski ("Komaroski") from July 26, 2012 to August 20, 2012 and then from September 12, 2012 to December 7, 2012, as a home improvement telemarketer.

2. According to the job description for the telemarketer position, the primary job duty was telephone solicitation, from local residents with listed telephone numbers, for orders to buy home improvement goods (such as siding, windows, roofing, etc.), 9:00 a.m. to 5:00 p.m. local time, Billings, Montana. Ex. 1. The company paid its telemarketers \$8.00 per hour plus a commission or bonus on sales for which individual telemarketers were credited. During both entire periods of her employment, Komaroski performed her work as a telemarketer in a satisfactory manner.

3. A short time before Komaroski was originally hired, the company retained Respondent Frank Delaware to supervise the telemarketers who worked for the company. The company retained Delaware because Darrell Anderson, owner and operator of the company, spent most of his time in the field and was unable to supervise the telemarketers himself. He believed, from observations he made when he came into the office, that the telemarketers took frequent smoke breaks and often made personal calls during working time. He concluded, after Delaware had supervised the telemarketers for a time, that they were generating more leads with Delaware than they had without him. He paid Delaware for his supervisory work.

4. The company issued checks to Delaware or to some of the entities he apparently operated during the time he supervised the telemarketers. There was evidence that some of the checks may have been for purchases of equipment or commission splits for projects on which Delaware worked. Based upon the credible and substantial evidence of record, at least some of the checks were payment to

Delaware for supervising the telemarketers. The evidence establishes that, more likely than not, Anderson followed Delaware's directions about what entity to write the checks to, to pay for services that Delaware provided, including supervision of the company's telemarketers. The evidence established that, more likely than not, Anderson authorized Delaware to act on the company's behalf in supervising the women, making Delaware the company's agent in this capacity.

5. All of the telemarketers that Delaware supervised were women, although the company had employees in its office that were men.

6. Anderson denied that the company was closed from August 20 until September 12, 2012, but the credible and substantial evidence established that the company's telemarketing operation was closed during that time. Before that time, a female employee had filed a sexual harassment complaint against Delaware, after which Delaware was gone for several weeks. The woman who filed the complaint had also left employment with the company. Komaroski suspected, from what she had observed and heard, that the female employee's sexual harassment charges against Delaware were connected to the closure of the telemarketing operation.

7. The telemarketing operation resumed on September 12, 2012, with Delaware no longer present. On September 12, 2012, when the work resumed, the company had Komaroski and one other woman as its telemarketers.

8. On October 8, 2012, Anderson brought back Delaware to supervise the phone room again, again providing him with an office and equipment, reestablishing his authority to act on behalf of the company. In October, as in July and August of that same year, Anderson verified to the telemarketers that Delaware was their supervisor. Immediately upon his return, Delaware fired the other telemarketer, and then asked Komaroski if she knew anyone who wanted to work. Komaroski called Charging Party Dolores McCarthy ("McCarthy"), who was interested. Anderson hired McCarthy.

9. When Delaware returned to work, Komaroski sent him a text message welcoming him back to Anderson Sales. Asked on cross-examination by Delaware why she sent the message, Komaroski responded, "Because at one point you and I actually got along."

10. After Delaware returned to supervise the telemarketers again, Komaroski began to think about making a formal and legal discrimination claim against the company for Delaware's conduct. During his earlier stint supervising the company's telemarketers, Delaware had demonstrated his willingness to behave inappropriately in the presence of women he supervised. Now he was now back again, and there was no improvement in his behavior.

11. On October 9, 2012, McCarthy began working for the company. McCarthy had some physical impairments (cancer survivor, arm injury and knee injury) that substantially limited her major life activity of mobility, which in turn substantially limited her ability to work. However, she had experience as a telemarketer, and made two leads her first day at work. During the entire period of her employment, McCarthy performed her job in a satisfactory manner. McCarthy was qualified to perform the functions of telemarketer and had a record of her physical impairments. She was a qualified person with a disability.

12. On McCarthy's first day of work on October 9, 2012 she immediately had concerns about working with Delaware because he used a lot of curse words.

13. At work on October 16, 2012, Delaware told Komaroski, McCarthy and other workers in the vicinity a story about owning emus and milking their sperm. The story was not appropriate for the workplace. Delaware acted the part of the male emu to demonstrate how the milking machine was attached. Over the protests of the female employees (i.e., "stop, that's gross") upon whom he was inflicting the story, Delaware continued to act as if he was the emu climaxing while being milked, adding "emu sounds." McCarthy told Delaware she was uncomfortable, but his view was that the performance was about something that was "hardly a human sexual act." The entire performance was unwelcome behavior.

14. On October 17, 2012, while at work, Delaware pulled his pants down; he was wearing spandex underneath his pants; he bent over, wiggled and smacked his buttocks and said "Look how firm this is; who wouldn't want some of this?"

15. On October 18, 2012, while at work, Delaware told McCarthy and Komaroski about this "desire" he had for enlargement of his penis by surgery, and grabbed his penis (through his pants) as he spoke. Marty Macy, a contractor for Anderson, overheard and observed Delaware and confronted him about his inappropriate behavior.

16. On October 18, 2012, Komaroski reported Delaware's conduct on the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> to Anderson; he did nothing. It appeared, from his testimony, demeanor and attitude, that Anderson did not want to believe the complaints and did not want even to investigate the complaints because he was (a) unwilling to confront Delaware and (b) relying upon Delaware to keep the telemarketers more productive.

17. On October 25, 2012, Delaware called McCarthy the "heavy one" and another Native American employee, Angeline DesJarlais "Sacajawea." References to employees, by their supervisor, categorizing them according to negative physical features (obesity is common but stereotypically not considered attractive) and by

national origin can, if frequent and unwelcome, be inappropriate in the workplace. However, the evidence in this case did not establish that Delaware made frequent and unwelcome references to the telemarketers physical features or national origins.

18. As already found, Delaware told offensive sexual stories and made offensive sexual comments and gestures at work. Komaroski and McCarthy frequently asked him to stop. Anderson, to whom the women did make multiple complaints about Delaware, never told Delaware to stop telling offensive sexual stories or making offensive sexual comments or gestures. Delaware did not stop.

19. On November 1, 2012, new phone books arrived. There is conflicting testimony regarding who ordered the books. Anderson testified that he had ordered the new phone books to get the old ones out of the hands of his telemarketers, who were using notes in the old books to find “new” leads that had already been customers in the past. However, after the new books were delivered, Delaware fired McCarthy and Komaroski, for ordering the new phone books (according to the charging parties’ testimony). The credible and substantial evidence of record supports their testimony about the reason for this firing. Firing the women for ordering the new phone books was not consistent with Anderson’s testimony that the new phone books were ordered by the company or its agents to supplant old books from which the telemarketers were “cheating” and treating old customers as new contacts. Firing the women after correcting the problem made no sense. Firing the women for giving the new phone books to other employees and keeping the old ones might have made sense, but since Delaware did not testify, there is no explanation of why he fired the two women this time, other than their explanation. On the fact issue of new phone books, the testimony of the charging parties was more credible than the testimony of Anderson.

20. On November 2, 2012, McCarthy called Anderson and complained about the sexual harassment and the hostile work environment, and that Delaware had fired McCarthy and Komaroski. Anderson instructed McCarthy and Komaroski to return to work on November 5, 2012, but did nothing to address their complaints of sexual harassment.

21. On November 5, 2012, when McCarthy and Komaroski returned to work as instructed by Anderson, Delaware again fired them.

22. On November 5, 2012, McCarthy and Komaroski again reported Delaware’s statement to Anderson; Anderson told McCarthy and Komaroski to report to work again the next day.

23. On November 6, 2012, McCarthy and Komaroski again reported for work. Anderson was not at the workplace. McCarthy and Komaroski were met by an

angry Delaware, who made them go into his office. Delaware lectured them about complaining to Anderson about his inappropriate sexual behavior, and threatened to fire them again if they made another complaint. In addition, Delaware made an obscene gesture toward them (“flipped them off”).

24. That same day, Delaware asked McCarthy and Komaroski why they did not come to pick up their checks on Friday, November 3, 2012. Komaroski replied because Marty Macy brought the checks to their homes. Delaware was angry and told them, “you have two strikes against you, we’re not going there again, I’m not going to piss up a rope, get out of here, you’re fired.” McCarthy and Komaroski explained they have no control over what Marty Macy does.

25. McCarthy called Anderson and told him about this incident, and he agreed to meet with them at the Red Rooster Café; Anderson never showed up. Thereafter, McCarthy left Anderson a voicemail stating that she believed Anderson was ignoring their complaints about Delaware and that Anderson was as guilty as Delaware in allowing sexual harassment and wrongful termination to continue. Anderson returned the call and told McCarthy and Komaroski to go in to work the next day to allow Delaware to rehire them. By doing so, Anderson intentionally left Delaware to remain in control of the intimidating, hostile and offensive work environment. Delaware did rehire the women again.

26. On November 13, 2012, Delaware announced he has ED - Erectile Dysfunction and stated “I’m a limp dick. All babies in the womb start off as girls. In development the clitoris drops to form the penis.” He also stated, “Do you know women can take Viagra? Donna [his estranged wife] and I experimented with her taking a quarter of my pills and she was so aroused it nearly killed her.”

27. Delaware’s sexually harassing behavior continued. Delaware continued telling sexually explicit stories and making inappropriate comments and gestures. Delaware talked about his estranged wife piercing her eyebrow. He talked about pierced tongues and oral sex.

28. McCarthy and Komaroski repeatedly complained and asked Delaware to stop; he responded by stating, “grow a pair” and “you’re not a nun.”

29. McCarthy and Komaroski repeatedly took their complaints of sexual harassment and hostile work environment to Anderson. Anderson again took no action.

30. McCarthy asked to take time off for a medical appointment as an accommodation for her disability. Delaware refused to allow McCarthy to work part-time and wrote her up for missing work for medical appointments.

31. McCarthy told Delaware that because of her disabilities, she could only work part-time. Delaware insisted that she work full-time, but told her only to put part-time hours on her timecard so that she could continue to collect disability payments. McCarthy did not do this.

32. McCarthy requested a day off to attend a school appointment and a doctor's appointment. Delaware approved her time off. When she returned, Delaware wrote her up for missing half day of work, even though her request for the full day off was still taped to the wall.

33. Over the course of their employment with the company, McCarthy and Komaroski tried to develop friendly relations with Delaware, for obvious reasons. He was their direct supervisor. He could, and sometimes did, make their lives at work miserable. If they could get along with him, it might make things less awful at work. They tried to banter with him about more neutral topics, and even tried to endure some of his milder excursions into odd and inappropriate subjects at work. The company was not protecting them and they needed their jobs – they tried to get along with Delaware. They even went to dinner at his house (which he required them to do to get their paychecks that day).

34. On December 5, 2012, McCarthy borrowed \$100 from Delaware.

35. On December 7, 2012, after arguing about the volume of the radio, Delaware came up behind Komaroski, put her in a chokehold using his forearm, and said "What are you going to do now?" Komaroski lost consciousness. Thereafter, Komaroski reported Delaware's assault to the police (Officer Gunther) and left her employment due to the assault, the harassment, and the hostile work environment.

36. Komaroski's final paycheck, issued December 7, 2012, was issued on the account of Anderson Sales.

37. McCarthy was fired again on December 7, 2012; Delaware fired her and refused to give her final paycheck to her, stating that she owed him money. Delaware kept her paycheck until December 21, 2012, and made her go to Yellowstone Pawn with him to cash it. He then took \$125.00 from her.

38. Anderson acknowledged that he had been told multiple times of Delaware's offensive conduct over the course of the employment of McCarthy and Komaroski. He admitted that he had never followed up or responded to the complaints. Anderson and Delaware had known each other for years. Anderson never did make any attempts to curb Delaware's sexually explicit stories, gestures, and unwelcome behaviors, as those were reported to him. Apparently, he either refused to believe the women, or felt keeping Delaware on the job was more

important than protecting the women from illegal sex discrimination in their employment. Both Anderson's knowledge of Delaware's conduct and Anderson's inactions despite that knowledge are absolutely imputed to the company. The evidence in this case shows that Anderson was the decision maker for the company.

39. Anderson Sales has been unable to get workers' compensation insurance since December 2012, so it has had no employees since December 2012. There is no evidence that McCarthy and Komaroski suffered wage losses because they left their jobs beyond the point at which Anderson Sales could no longer have employed them.

40. McCarthy testified she worked only two months at Anderson Sales and earned approximately \$1,916, or \$239.50 a week. She also at most could have earned three weeks of additional wages before Anderson Sales shed its last employees because of its inability to provide workers' compensation coverage as required by law, for a total loss of back pay of \$718.50. Interest on her lost weekly wages during the weeks of December 14, 21 and 28 (with the end of the year off), 2012, respectively, to the decision date, totals \$138.95.<sup>1</sup>

41. McCarthy did not establish that she suffered any economic harm as a result of working full-time or being reprimanded for taking time to go to a doctor's appointment. She apparently was paid for all the hours she worked, and she chose to return to full-time work two different times. She has not proved that she lost any disability benefits in any amount, as a result of her earnings with the company.

42. Komaroski worked 13 weeks at Anderson Sales and earned approximately \$4,160, or \$320.00 per week. She at most could have earned three weeks of additional wages before Anderson Sales shed its last employees because of its inability to provide workers' compensation coverage as required by law, for a total loss of back pay of \$960.00, had she not been fired. Interest on her lost weekly wages during the weeks of December 14, 21 and 28 (with the end of the year off), 2012, respectively, to the decision date, totals \$185.67.<sup>2</sup>

43. McCarthy is asking for \$17,000 for emotional distress, and Komaroski requested \$25,000 for emotional distress. Neither offered any rationale for the

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<sup>1</sup> 713 days of interest equals 1.953 years, 706 days of interest equals 1.934 years, and 699 days of interest equals 1.915 years of interest. One tenth (10% per annum interest) times \$239.50 equals \$23.95 per year interest on \$239.50. \$23.95 times 1.953 years, plus \$23.95 times 1.934 years, plus \$23.95 times 1.915 years equals \$138.95 in prejudgment interest as of December 1, 2014.

<sup>2</sup> 713 days of interest equals 1.953 years, 706 days of interest equals 1.934 years, and 699 days of interest equals 1.915 years of interest. One tenth (10% per annum interest) times \$320.00 equals \$32.00 per year interest on \$320.00. \$32.00 times 1.953 years, plus \$32.00 times 1.934 years, plus \$32.00 times 1.915 years equals \$185.67 in prejudgment interest as of December 1, 2014.



amount, but they did testify to the emotional distress they suffered. Clearly, both women in this case did suffer emotional distress as a result of their supervisor's inappropriate conduct in the workplace. McCarthy is entitled to recover \$17,000 for her emotional distress, and Komaroski is entitled to recover \$25,000 for her emotional distress.

#### IV. Discussion<sup>3</sup>

For decades, Montana law has prohibited discrimination in employment because of sex. Mont. Code Ann. § 49-2-301(1)(a). An employer who engages in unwelcome conduct of a sexual nature toward an employee that is sufficiently abusive to alter the terms and conditions of employment creates a hostile working environment that violates the employee's right to be free from discrimination. *Brookshire v. Phillips*, HRC Case #8901003707 (April 1, 1991), affirmed sub. nom., *Vainio v. Brookshire*, 258 Mont. 273, 852 P.2d 596 (1993). Anderson's agent, Delaware, sexually harassed McCarthy and Komaroski. His agency status is quite clear. He was authorized to supervise the telemarketers on behalf of the company. He appears to have been an employee of the company, but even if he wasn't, he was still an agent of the company in his capacity (as Anderson was careful to show the telemarketers) as the person who supervised the telemarketers in their work for the company. The Montana Human Rights Act defines "employer" to include "an agent of the employer." Mont. Code Ann. § 49-2-101(11). Anderson unquestionably empowered Delaware, repeatedly, to supervise these women on behalf of the company.

In *Snell v. M.D.U. Co.* (1982) 198 Mont. 56, 63-68, 643 P.2d 841, 844-48, the Montana Supreme Court recognized that isolated stray racial comments might not be enough to establish a hostile discriminatory attitude because of race, for which the employer would be liable, and that the trial court's determination either way, when the evidence might support a judgment either way, will not be erroneous.

"Some of his complaints concerning racial slurs are probably true. On the other hand, it is probably also true that there is nothing which the management or leadership of a company like Cameron can do which will totally and absolutely prevent persons from all races from uttering racial slurs. Some stoic and patient acceptance of these slurs is merely one of the prices that all of us pay for living in a pluralistic society."

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<sup>3</sup> Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Snell at 63-64; 643 P.2d at 845, quoting *Buckner v. Cameron Iron Works* (S.D.Tex.1979), 23 FEP cases 1092, 1102.

In this case, the employer, with notice, allowed a pervasive pattern of sexual harassment against McCarthy and Komaroski, rendering working conditions oppressive, unpredictable, unbearable, and ultimately dangerous for Komaroski. Resignation really had become their only reasonable alternative, Snell at 65, 643 P.2d at 846, so they continued to work until Komaroski quit after Delaware attacked her and choked her into unconsciousness, and McCarthy was fired one more time, for the last time, that same day. These were NOT isolated stray instances of “joking” comments about women. For whatever reason, Delaware greatly exceeded the boundaries of propriety in how he behaved with and what he said to these women, and the employer knew about it.

The Montana Human Rights Act broadly empowers the Department of Labor and Industry (on whose behalf this Hearing Officer acts), when illegal discrimination is found, “to require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against.” Mont. Code Ann. § 49-2-506(1)(b). Courts and quasi-judicial tribunals award damages in employment discrimination cases to rectify the harm caused and to make the victims whole. *P. W. Berry Co. v. Freese*, 239 Mont. 183, 188, 779 P.2d 521, 524 (1989); *Dolan v. School District No. 10*, 195 Mont. 340, 636 P.2d 825, 830 (1981); accord, *Albermarle Paper Co. v. Mood*, 422 U.S. 405, 95 S.Ct. 2362, 2372 (1975). McCarthy and Komaroski are entitled to recover the wages they lost because of the illegal discrimination.

However, the company established that it could no longer have employees after December 2012, because it was unable to obtain industrial injury insurance coverage required to employ workers in Montana. The company met its burden to establish, in response to the proof of McCarthy and Komaroski, that a lesser amount of past wages, and no future wages, were due to them, because they could not have made those wages with the company, and therefore did not suffer the loss of such wages. *P. W. Berry Co.* at 187, 779 P.2d at 523-54.

McCarthy and Komaroski are entitled to prejudgment interest on the wages lost. Prejudgment interest is awarded on back pay, and when the amount lost and the accrual dates are proved, interest from the due date is proper. *Id.* Prejudgment interest accrues at 10% per year, simple interest. Mont. Code Ann. §25-9-205(1).

The Montana Supreme Court has approved awards, in Human Rights Act cases, for emotional distress established by testimony or inferred from circumstances. *Vortex Fishing Systems v. Foss*, ¶ 33, 2001 MT 312, 308 Mont. 8, 38 P.2d 836.

McCarthy and Komaroski established that they each did suffer emotional distress from the sexual harassment. The Hearing Officer was not willing to award more emotional distress damages than the charging parties requested, because (1) they are best able to articulate the value they place upon their emotional distress and (2) their pleadings should limit their recovery. Their emotional distress recoveries are therefore in the amounts that they requested.

Finally, it makes no difference whether Delaware was doing business under one or several names (registered or not) or just as himself. He (and/or any alter egos) acted as an agent for the company, which rendered both him and the company liable.

## V. Conclusions of Law

1. The Department has jurisdiction over this contested case proceeding. Mont. Code Ann. §49-2-501 and 512.

2. Respondents Anderson Sales, Inc., and Frank Delaware illegally discriminated against Delores McCarthy and Louise Komaroski when Delaware, acting on behalf of the company as its supervising agent, subjected them to sexual harassment that created a hostile environment and eventually forced them to resign their positions because of that harassment, and the company took no action despite multiple complaints from the women, to rein in its supervising agent. In so behaving, both the company and Delaware engaged in illegal discrimination in employment because of sex, in violation of Mont. Code Ann. § 49-2-303(1)(a).

3. Both the company and Delaware are subject to orders (1) placing conditions upon their future conduct, (2) requiring of them reasonable measures to correct the discriminatory practice found, and (3) imposing joint and several liability upon them for the awards necessary to rectify the harm to the targets of the discrimination. Mont. Code Ann. § 49-2-506(1)(a) and (b).

4. Attorney fees and costs are recoverable by the prevailing parties in an action in district court, in that court's discretion. Mont. Code Ann. § 49-2-505(8).

## VI. Order

1. Judgment is found in favor of Delores McCarthy and Louise Komaroski and against Anderson Sales, Inc., and Frank Delaware on the charges that they sexually harassed McCarthy and Komaroski in employment, in violation of the prohibitions against discrimination in employment because of sex.

2. The company and Delaware are each permanently enjoined from sexual harassment of any females either employs, and likewise of any female employees either supervises.

3. Before operating any business with female employees or supervising any female employees, the company and Delaware must have completed, within six months of this decision, appropriate training, as dictated by the Montana Department of Labor and Industry, Human Rights Bureau, in the laws against discrimination in employment because of sex. Failure timely to complete said training bars the company and/or Delaware from operating any business with female employees or supervising any female employees, at any time at any place within the State of Montana, until the failure to complete said training is remedied. It is within the discretion of the Human Rights Bureau, but the Hearing Officer recommends that training of the company must include training of Darrell Anderson.

4. The company and Delaware are ordered to pay, and have joint and several liability to pay: (A) to Delores McCarthy, the sum of \$17,857.45, for lost back pay, prejudgment interest on lost back pay and emotional distress, as specified in Findings 40 and 43; and (B) to Louise Komaroski, the sum of \$26,145.67, for lost back pay, prejudgment interest on lost back pay and emotional distress, as specified in Findings 42 and 43.

5. Interest on this judgment accrues according to law.

Dated: December 1, 2014.

/s/ TERRY SPEAR

Terry Spear, Hearing Officer  
Office of Administrative Hearings  
Montana Department of Labor and Industry

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## NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Patricia Peterman, Peterman Bekkedahl & Green, PLLC, attorney for Delores McCarthy and Louise Komaroski; Thomas Singer, Axilon Law Group, PLLC, attorney for Anderson Sales, Inc., and Frank Delaware, acting on his own behalf:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c).

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission  
c/o Marieke Beck  
Human Rights Bureau  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Annah Smith, (406) 444-4356 immediately to arrange for transcription of the record.

McCarthy & Komaroski HOD